

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JOSEPH L. D'ALESSANDRO,        )  
                                      )  
                                      )  
Plaintiff,                        )  
                                      )  
                                      )  
v.                                 ) Civ. No. 05-496-GMS  
                                      )  
                                      )  
JUDGE J. CURTIS JOYNER,        )  
et al.,                            )  
                                      )  
                                      )  
Defendants.                      )

**MEMORANDUM**

Plaintiff Joseph L. D'Alessandro ("D'Alessandro") brings this action alleging the United States of America and numerous United States district judges and appellate justices violated his constitutional rights through discrimination, bias, prejudice, cronyism, collusion, "mis-prison of felony" and treason. He appears *pro se* and moves the Court for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (D.I. 4.) The motion for leave to proceed *in forma pauperis* is GRANTED.

The court now proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915. For the reasons discussed below, the complaint is dismissed without prejudice, as frivolous and malicious, pursuant to 28 U.S.C. § 1915(e)(2)(B).

**I. THE COMPLAINT**

D'Alessandro's complaint is a rambling discourse complaining of the actions of the federal judiciary and the United States, replete with pages of case citations. He complains that he was deprived the right to be heard and was denied the right to due process when a hearing was not held in a civil case. D'Alessandro makes specific mention of two cases presided over by

Chief Judge Sue L. Robinson, U.S. District Judge for the District of Delaware, (“Chief Judge Robinson”), and her actions in dismissing the cases: Civ No. 01-623-SLR, *D’Alessandro v. LL Bean, Inc.* and Civ. No. 02-77-SLR, *D’Alessandro v. LL Bean, Inc.* Next, D’Alessandro complains that the Court of Appeals denied his appeal, and alleges that he had a right to present *prima facie* evidence. More generally, D’Alessandro alleges the defendants violated his constitutional rights and violated federal law. He seeks treble and punitive damages.

## II. STANDARD OF REVIEW

When a litigant proceeds *in forma pauperis*, 28 U.S.C. § 1915 provides for dismissal under certain circumstances. Section 1915(e)(2)(B) provides that the court may dismiss a complaint, at any time, if the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. An action is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

The court must “accept as true factual allegations in the complaint and all reasonable inferences that can be drawn therefrom.” *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996)(citing *Holder v. City of Allentown*, 987 F.2d 188, 194 (3d Cir. 1993)). Additionally, *pro se* complaints are held to “less stringent standards than formal pleadings drafted by lawyers” and can only be dismissed for failure to state a claim when “it appears ‘beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972)(quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Inasmuch as the plaintiff proceeds *pro se*, the court construes the complaint liberally. *Haines v. Kerner*, 404

U.S. 519, 520 (1972).

### **III. ANALYSIS**

#### **A. Judicial Immunity**

As is well known, federal judges possess absolute immunity. *Nixon v. Fitzgerald*, 457 U.S. 731, 757 n. 39 (1982). “The doctrine of judicial immunity is founded upon the premise that a judge, in performing his or her judicial duties, should be free to act upon his or her convictions without threat of suit for damages.” *Figueroa v. Blackburn*, 208 F.3d 435, 440 (3d Cir.2000); *see also Bradley v. Fischer*, 80 U.S. (13 Wall.) 335, 347 (1972). “Although unfairness and injustice to a litigant may result on occasion, ‘it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.’” *Mireles v. Waco*, 502 U.S. 9-10 (1991) (citing *Bradley v. Fisher*, 80 U.S. at 347).

D’Alessandro takes exception to actions taken by the judges in the court proceedings wherein he was a litigant. In reading the complaint, it is clear that he complains of actions taken by the district judges and appellate justices in their judicial capacity. These defendants have absolute immunity for those actions and, therefore, dismissal is appropriate. The claims against the district judges and appellate justices are both factually and legally frivolous.

#### **B. Sovereign Immunity**

D’Alessandro also names the United States as a defendant. It is well established that an action against the United States cannot be maintained unless the United States waives its

sovereign immunity. *United States v. Mitchell* (I), 445 U.S. 535, 538 (1980). A waiver of sovereign immunity cannot be implied but must be unequivocally expressed. *Id.* (citing *United States v. King*, 395 U.S. 1, 4 (1969)). Moreover, “[i]t is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.” *United States v. Mitchell* (II), 463 U.S. 206, 212 (1983).

There is no indication that the United States has consented to this lawsuit. Accordingly, D’Alessandro is barred from suing the United States under the doctrine of sovereign immunity.

### **C. Malicious Litigation**

D’Alessandro is a well-known litigant in this Court. Recently, the Court dismissed Consolidated Civil Case Nos. 04-137-JJF and 04-616-JJF (“Consolidated Case”) finding the complaints were both frivolous and malicious pursuant to 28 U.S.C. § 1915(e)(2)(B). *D’Alessandro v. United States*, Civ.A. 04-137-JJF, Civ.A. 04-616-JJF, 2005 WL 984352 (D.Del. Apr. 27, 2005). There, D’Alessandro raised basically the same allegations - that the United States and various federal judges, in addition to other defendants, violated his constitutional rights. In its April 27, 2005, Order, the court noted that D’Alessandro had filed eleven complaints, and that many of those cases appeared to be either duplicative or related to the same nucleus of operative facts. *Id.* Indeed, in the Consolidated Case, D’Alessandro alleged that every federal judge who had ever been assigned to one of his cases had engaged in a conspiracy to violate his constitutional rights. *Id.* D’Alessandro continues to raise this claim even though the Consolidated Case and other prior lawsuits raising the same or similar claims have been dismissed. See *D’Alessandro v. Robinson*, 210 F.Supp.2d 526 (D.Del. July 22, 2002);

*D'Alessandro v. United States*, Civ. No. 02-1334-JHR (*dismissed June 25, 2003*); *D'Alessandro v. United States*, Civ. No. 02-1388-JHR (*dismissed June 25, 2003*); *D'Alessandro v. United States*, Civ. No. 03-775-RFK (*dismissed Feb. 17, 2004*); and *D'Alessandro v. Federal Civil Panel*, Civ. No. 03-914-RFK (*dismissed Feb. 17, 2004*).

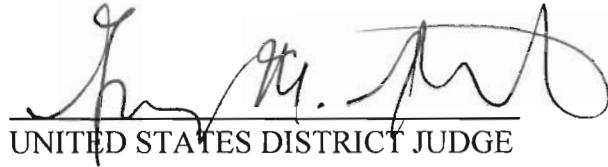
A complaint is malicious when it “duplicates allegations of another [ ]federal lawsuit by the same plaintiff.” *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir.1993); *see also Banks v. Gillie*, Civ. Act. No. 03-3098, 2004 U.S. Dist. LEXIS 5413, at \*9 (E.D.La. Feb. 25, 2004) (duplicative and repetitive complaints are considered malicious for purposes of § 1915); *McGill v. Juanita Kraft Postal Service*, No. 3:03-CV-1113-K, 2003 WL 21355439, at \*2 (N.D. Tx. June 6, 2003) (complaint is malicious when it ““duplicates allegations of another pending federal lawsuit by the same plaintiff” or when it raises claims arising out of a common nucleus of operative facts that could have been brought in the prior litigation”) (quotations omitted).

D'Alessandro's pattern of filing repetitive claims or claims arising out of a common nucleus operative facts, even though those claims have been dismissed, falls squarely in the category of malicious litigation. Moreover, the Honorable Joseph J. Farnan, Jr. of this court previously determined that D'Alessandro, in repeatedly filing similar complaints against the same or similar defendants, has demonstrated a “history of unsubstantiated and vexatious litigation.” *See D'Alessandro v. United States*, Civ.A. 04-137-JJF, Civ.A. 04-616-JJF, 2005 WL 984352, at \*4 (D.Del. Apr. 27, 2005) (citations omitted).

Based upon the foregoing, the court concludes that D'Alessandro's complaint is malicious within the meaning of Section 1915(e)(2)(B). It is, therefore, dismissed.

**V. CONCLUSION**

For the above stated reasons the court finds that the complaint is factually and legally frivolous, as well as malicious, and that dismissal is appropriate. An appropriate order will be entered.



UNITED STATES DISTRICT JUDGE

March 31, 2006  
Wilmington, Delaware

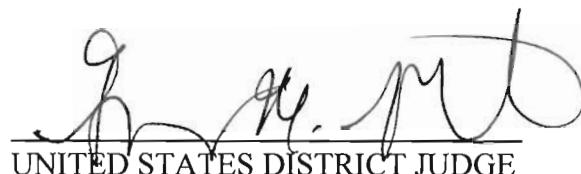
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JUDGE J. CURTIS JOYNER,        )  
et al.,                            )  
                                    )  
Defendants.                     )

**ORDER**

At Wilmington this 31<sup>st</sup> day of March, 2006, for the reasons set forth in the  
Memorandum issued this date;

1.     The motion for leave to proceed *in forma pauperis* (D.I. 4) is GRANTED.
2.     The complaint is DISMISSED without prejudice pursuant to 28 U.S.C. §  
1915(e)(2)(B) as both frivolous and malicious.



UNITED STATES DISTRICT JUDGE